

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF PENNSYLVANIA

ROSEMARY FALLON a/k/a
ROSEMARY COX a/ka ROSEMARY
JOHNSON,

Plaintiff,

v.

PLAINS COMMERCE BANK, JOHN
DOES 1-10 AND X, Y, Z
CORPORATION,

Defendants.

NOTICE OF REMOVAL

PLEASE TAKE NOTICE that pursuant to 28 U.S.C. §§ 1331, 1441(b), and 1446, Defendant Plains Commerce Bank, by its attorneys, hereby removes this action from the Court of Common Pleas of Chester County, Pennsylvania to the United States District Court for the Eastern District of Pennsylvania. In support of this Notice of Removal, Defendant Plains Commerce Bank ("Defendant") states as follows:

Plaintiff Rosemary Fallon originally commenced this action by filing a Complaint against Defendant in the Court of Common Pleas of Chester County, Pennsylvania, where it is presently captioned as *Rosemary Fallon a/k/a Rosemary Cox a/k/a Rosemary Rosemary Johnson, vs. Plains Commerce Bank, John Does 1-10 and X,Y,Z Corporations*, Docket No.: 2001-05251. No further proceedings before the State court have occurred.

1. In the Complaint, plaintiff alleges statutory causes of action against Defendant. A true and correct copy of Plaintiff's Complaint is attached hereto as Ex. "A."

2. Plaintiff accuses Defendant of violating the Fair Credit Reporting Act, 15 U.S.C. § 1681, *et seq.*

3. Plaintiff provided Defendant with her Complaint on or about August 12, 2011.

4. This Court has federal question jurisdiction over Plaintiff's claim pursuant to 28 U.S.C. §§ 1331 and 1441(b) in that the claims are "founded on a claim or right arising under the laws of the United States[.]"

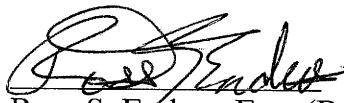
5. This Notice of Removal is timely, having been filed within thirty (30) days of the date on which defendant was served with Plaintiff's Complaint. *See* 28 U.S.C. § 1446.

6. Written notice of this Notice of Removal of this action is being immediately provided to the Court of Common Pleas of Chester County, Pennsylvania. *See* Ex. "B."

7. Written notice of this Notice of Removal of this action is being caused to be served on counsel for the plaintiff.

WHEREFORE, Defendant Plains Commerce Bank gives notice that this action is removed from the Court of Common Pleas of Chester County, Pennsylvania to the United States District Court for the Eastern District of Pennsylvania.

Dated: August 15, 2011



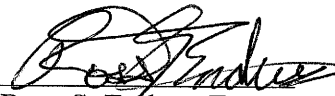
Ross S. Enders, Esq. (Bar No.: 89840)
SESSIONS, FISHMAN, NATHAN & ISRAEL, L.L.C.
Attorney for Defendant Plains Commerce Bank
200 Route 31 North, Suite 203
Flemington, NJ 08822
(908) 751-5941
fax (908) 751-5944
renders@sessions-law.biz

CERTIFICATE OF SERVICE

I hereby certify that on this 15th day of August, 2011, a copy of the foregoing Notice of Removal was sent via ECF Filing to the Clerk of the Court, United States District Court for the Eastern District of Pennsylvania, and via electronic mail and regular mail to counsel for plaintiff at the below address:

Vicki Piontek, Esq.
Bar ID No. 83559
951 Allentown Road
Lansdale, PA 19446
Attorney for Plaintiff
Phone: 877-737-8617
Fax: 866-408-6735
palaw@justice.com

By:



Ross S. Enders, Esq.
Attorney for Defendant
Plains Commerce Bank

EXHIBIT "A"

IN THE COURT OF COMMON PLEAS
OF CHESTER COUNTY, PENNSYLVANIA
CIVIL ACTION-LAW

ROSEMARY FALLON a/k/a ROSEMARY COX
a/k/a Rosemary Johnson
670 MARSHALL RD
GLENMOORE PA 19343,

Plaintiff

Vs.

Plains Commerce Bank
3817 South Elmwood Ave
Sioux Falls, SD 57105

and

John Does 1-10

and

X,Y, Z Corporations

Defendant

Jury Trial Demanded

2001 - 05251

OFFICE OF THE
PROthonotary
CHESTER CO., PA.

11 JUL 13 AM 10:34

FILED

NOTICE TO DEFEND

You have been sued in Court. If you wish to defend against the claims set forth in the following pages, you must take action within twenty (20) days after this Complaint and Notice are served by entering a written appearance personally or by attorney and filing in writing with the Court your defenses or objections to the claims set forth against you. You are warned that if you fail to do so the case may proceed without you and a judgment may be entered against you by the Court without further notice to you for any money claimed in the Complaint or for any other claim or relief requested by Plaintiff(s). You may lose money or property or other rights important to you.

YOU SHOULD TAKE THIS PAPER TO YOUR LAWYER AT ONCE. IF YOU DO NOT HAVE A LAWYER OR CANNOT AFFORD ONE, GO TO OR TELEPHONE THE OFFICE SET FORTH BELOW TO FIND OUT WHERE YOU CAN GET LEGAL HELP:

Lawyer Referral Service
Chester County Bar Association
15 West Gay Street - P.O. Box 3191 - West Chester PA 19381
610-429-1500

IN THE COURT OF COMMON PLEAS
OF CHESTER COUNTY, PENNSYLVANIA
CIVIL ACTION-LAW

ROSEMARY FALLON a/k/a ROSEMARY COX
a/k/a Rosemary Johnson
670 MARSHALL RD
GLENMOORE PA 19343,

Plaintiff

Vs.

Plains Commerce Bank
3817 South Elmwood Ave
Sioux Falls, SD 57105

and
John Does 1-10
and
X,Y, Z Corporations

Defendant

Jury Trial Demanded

2001 - 05251

OFFICE OF THE
PROthonARY
CHESTER CO., PA.

11 JUL 13 AM 10:34

FILED

COMPLAINT

1. This is an action brought by a consumer for violation of alleged violations of the Fair Credit Reporting Act (FCRA), 15 USC 1681 et. Seq..
2. Plaintiff is ROSEMARY FALLON a/k/a ROSEMARY COX, an adult individual whose principle residence is located at 670 MARSHALL ROAD, GLENMOORE PA 19343.

3. Defendants are the following.

- a. Plains Commerce Bank, a business entity with a principal place of business located at 3817 South Elmwood Avenue, Sioux Falls, SD 57105.
- b. John Does 1-10, individuals or business entities whose identities are not known to Plaintiff at this time, but which will become known upon proper discovery. It is believed and averred that such Does played a substantial role in the commission of the acts described in this complaint.
- c. X,Y,Z Corporations, business identities whose identities are not known to Plaintiff at this time, but which will become known upon proper discovery. It is believed and averred that such entities played a substantial role in the commission of the acts described in this complaint.

JURISDICTION AND VENUE

4. The previous paragraphs of this complaint are incorporated by reference and made a part hereof.
5. Venue is proper in this jurisdiction because Defendant(s) do(es) business in this jurisdiction and avails itself of the benefits of the market in this jurisdiction.
6. Venue is proper in this jurisdiction because a substantial portion of the transaction(s), occurrence(s) or omission(s) took place within this jurisdiction.

**COUNT ONE: VIOLATION OF THE FAIR CREDIT REPORTING ACT,
15 USC 1681 s-2 et seq.; Specifically 15 USC 1681 s-2 (b) et. seq.**

7. The previous paragraphs of this complaint are incorporated by reference and made a part hereof.
8. Plaintiff is a "consumer," as codified at 15 U.S.C. § 1681a(c).
9. Defendant is an entity who, regularly and in the course of business, furnishes information to one or more credit reporting agencies about Defendants(s) transactions or experiences with any consumer and Defendant is a "furnisher," as codified at 15 U.S.C. § 1681s-2.
10. Plaintiff disputed the alleged account(s) in writing with Defendant(s). See Attached exhibits.
11. Defendant(s) received Plaintiff's disputes concerning the alleged account(s). See attached exhibits.
12. Plaintiff then disputed the alleged account(s) in writing with relevant credit bureaus. See attached exhibits.

13. One or more of the relevant credit bureaus then conducted an investigation where Defendant was contacted. See attached exhibits.
14. Defendant verified the alleged account(s) with one or more of the bureaus. See attached exhibits.
15. At the time that Defendant verified the alleged account(s) with one or more of the relevant credit bureaus, Defendant failed to state that the account(s) had been previously disputed by Plaintiff. See attached exhibits.
16. Pursuant to 15 USC 1681 s-2, Defendant(s) had a duty to notify the relevant credit reporting bureaus of Plaintiff's dispute of the account(s).
17. Upon information and belief, it is believed and averred that Defendant(s) failed to fulfill such duty to the relevant credit reporting bureaus in a manner prescribed by 15 USC 1681 s-2. See attached exhibits.

18. Upon information and belief, it is averred that Defendant has a standard practice policy which contradicts it's duties pursuant to 15 USC 1861 s-2.
19. Plaintiff bring this action under 15 USC 1681 s-2(b), as distinguished from 15 USC 1681s-2(a).
20. There is no private cause of action under 15 USC 1681s-2(a). Only the government can bring a cause of action under 15 USC 11681 s-2(a). For example, the Attorney General could bring a claim on behalf of consumers under 15 USC 1681s-2(a).

21. But there is a private cause of action under 15 USC 1681s-2(b). See the following case law which distinguishes between the government right of action under 15 USC 1681s-2(a), and the private cause of action under 15 USC 1681s-2(b).

Marshall v. Swift River Academy, LLC, 2009 WL 1112768 (9th Cir. 2009).

A consumer has no private right of action under FCRA against furnisher merely because the furnisher failed to provide accurate information to consumer reporting agencies.

Beisel v. ABN Ambro Mortgage, Inc., No. 07-2219, 2007 WL2332494, *1 (E.D. Pa. Aug. 10, 2007).

In order to prevail on a FCRA claim Plaintiff “must prove [he] notified a credit reporting agency of the dispute, the credit reporting agency then notified the furnisher of information, and the furnisher of information failed to investigate or rectify the disputed charge.”).

Catanzaro v. Experian Information Solutions, Inc., 671 F. Supp.2d 256, 260 (D. Mass. 2009).

Notification by a consumer reporting agency to the furnisher is a prerequisite for furnisher liability under FCRA.

Kaetz v. Chase Manhattan Bank, 2007 WL 1343700, *3 (M.D. Pa. 2006). The Court dismissed Plaintiff’s Complaint, but only because Plaintiff failed to allege that he disputed the accuracy of the debt to a credit agency, or that the credit agency thereafter reported dispute to defendant.

22. Because Plaintiff first disputed the account with Defendant, and then disputed the account with the credit reporting agency afterwards, and then Defendant verified the derogatory information to the Credit Reporting Agency without stating that the account was in a "disputed" status, Plaintiff does have a private cause of action against Defendant under these particular circumstances.
23. It is believed and averred that Defendant has standard business practices antithetical to its duties under 15 USC 1681 s-2.

LIABILITY

24. The previous paragraphs of this complaint are incorporated by reference and made a part hereof .
25. At all times various employees and / or agents of Defendant were acting as agents of Defendant, and therefore Defendant is liable to for the acts committed by its agents and / or employees under the doctrine of respondeat superior.
26. At all times various employees and / or agents of Defendant were acting as agents of Defendant, and therefore Defendant is liable to Plaintiff for the acts committed by its agents and / or employees under the theory of joint and several liability because Defendant and its agents were engaged in a common business venture and were acting jointly and in concert.

DAMAGES

27. The preceding paragraphs are incorporated by reference and made a part hereof.
28. Plaintiff's actual damages are \$1.00 more or less, including but not limited to postage, phone calls, fax, gas, mileage, etc.
29. \$1,000.00 statutory damages under 15 USC 1681 et. seq.
30. Plaintiff suffered some distress and anger as a result of her rights being violated by Plaintiff and the rights of other consumers.
31. The value of Plaintiff's emotional distress shall be proven at trial.
32. Plaintiff believes and avers that for purposes of a default judgment, her distress has a Dollar value of no less than \$5,000.00.
33. Plaintiff believes and avers that the acts committed by Defendant are willful, wanton intentional, or reckless at best. Plaintiff believes and avers that Defendant's acts are systemic. Therefore, punitive damages are warranted.
34. Plaintiff believes and avers that punitive damages should be awarded to Plaintiff in the amount of no less than \$20,000.

35. Plaintiff believes and avers that he is entitled to reasonable attorney fees of \$1,925 at a rate of \$350.00 per hour, described below.

a. Consultation with client and review of file.	
Drafting of disputes. Organizing documents.	2 hour
b. Drafting of writ and related documents	.25
c. Drafting , editing, review and filing of compliant and related documents	1
d. Service of Process	.25
e. Follow up correspondence with Defense	2

Total = 5.5

\$1,925

36. Plaintiff's attorney fees continue to accrue as the case moves forward.

INJUNCTIVE RELIEF

37. Plaintiff requests an order from this honorable court directing Defendant to report Plaintiff's account(s) referred to in the attached exhibits as "disputed," in accordance with 15 USC 1681 s-2, or not to report the account(s) at all.

OTHER RELIEF

38. Plaintiff requests such other relief as this court may deem just and proper.

JURY TRIAL

39. Plaintiff requests and demands a jury trial in this matter.

Wherefore, Plaintiff demands judgment against Defendant(s) in the amount of
\$27,576 enumerated as follows.

\$1.00 actual damages
\$1,000.00 statutory damages,
\$1,925 attorney fees
\$5,000 emotional distress
\$20,000 punitive damages

\$27,926

Plaintiff seeks declarative relief and in injunction requiring Defendant to comply with
15 USC 1681 s-2. Plaintiff seeks such other relief as this Court deems fair and just.

Vicki Piontek
Vicki Piontek, Esquire
Attorney for Plaintiff
951 Allentown Road
Lansdale, PA 19446
877-737-8617
Fax: 866-408-6735
palaw@justice.com

7-11-2011
Date

IN THE COURT OF COMMON PLEAS
OF CHESTER COUNTY, PENNSYLVANIA
CIVIL ACTION-LAW

ROSEMARY FALLON a/k/a ROSEMARY COX :
a/k/a Rosemary Johnson :
670 MARSHALL RD :
GLENMOORE PA 19343, :
Plaintiff :

Vs. :
Plains Commerce Bank :
3817 South Elmwood Ave :
Sioux Falls, SD 57105 :
and :
John Does 1-10 :
and :
X, Y, Z Corporations :

Defendant :

VERIFICATION

I, ROSEMARY FALLON, affirm that the statements contained in the attached amended complaint are true and accurate to the best of my knowledge, understanding and belief.


ROSEMARY FALLON

5/15/11
Date

EXHIBITS

Rosemary Fallon
670 Marshall Rd
Glenmoore, PA 19343
(610)942-2119

Plains Commerce Bank
3817 S Elmwood Ave
Sioux Falls, SD 57105

By Certified U.S. Mail

Re: **DISPUTE**

Rosemary Fallon SSN: [REDACTED]
Account Number 4185340103476189
Alleged Balance \$757

U.S. Postal Service TM	
CERTIFIED MAIL TM RECEIPT	
(Domestic Mail Only: No Insurance Coverage Provided)	
For delivery information visit our website at www.usps.gov	
OFFICIAL USE	
Postage	\$
Certified Fee	
Return Receipt Fee (Endorsement Required)	
Restricted Delivery Fee (Endorsement Required)	
Total Postage & Fees	\$
Sent To Plains Commerce Bank	
Street, Apt. No., or PO Box No. 3817 S. Elmwood	
City, State, ZIP+4 [®] Sioux Falls, SD 57105	
PS Form 3800, August 2008	

To Whom it May Concern:

Your company has placed derogatory information on my credit report for the above referenced account.

The balance that your company claims against me is comprised largely of interest, finance charges, penalties or other fees not justified by any existing contract.

The amount stated on my credit report is excessive and inflated. I request proof of the contract justifying such charges. I also would like proof of the balance and a breakdown of all charges.

I have never been provided a copy of the contract which proves the interest rate, finance charges, late fees and other penalties. I dispute such amounts and believe that the actual balance, if any, is much lower than the amount stated on my credit report.

I am requesting that you conduct an investigation about the excessive balance and the excessive charges such as interest and other fees.

THIS IS A DISPUTED ACCOUNT. YOU MUST MARK THIS ACCOUNT AS DISPUTED ON MY CREDIT REPORT.

Sincerely,

Rosemary Fallon
Rosemary Fallon

12/5/10
Date

Rosemary Fallon
670 Marshall Rd
Glenmoore, PA 1934
(610)-942-2119

Plains Commerce Bank
3817 S Elmwood Ave
Sioux Falls, SD 57105

By Certified U.S. Mail

DISPUTE

RE: Rosemary Fallon SSN: [REDACTED]
Account Number 4185 3401 0347 6189
Alleged High Balance \$757

To Whom it May Concern:

Your company has placed derogatory information on my credit report for the above referenced account. The balance that your company claims against me is comprised largely of interest, finance charges, penalties or other fees not justified by any existing contract.

The amount of the alleged high balance stated on my credit report is excessive and inflated. I request proof of the contract justifying such charges. I also would like proof of the balance and a breakdown of all charges.

I have never been provided a copy of the contract which proves the interest rate, finance charges, late fees and other penalties. I dispute such amounts and believe that the actual balance, if any, is much lower than the amount stated on my credit report.

I am requesting that you conduct an investigation about the excessive balance and the excessive charges such as interest and other fees.

THIS IS A DISPUTED ACCOUNT. YOU MUST MARK THIS ACCOUNT AS DISPUTED ON MY CREDIT REPORT.

Sincerely,

Rosemary Fallon
Rosemary Fallon

3/4/11
Date

U.S. Postal Service TM	
CERTIFIED MAIL TM RECEIPT	
(Domestic Mail Only; No Insurance Coverage Provided)	
For delivery info, mailer visit our website at www.usps.com	
OFFICIAL USE	
Postage	\$
Certified Fee	
Return Receipt Fee (Endorsement Required)	
Restricted Delivery Fee (Endorsement Required)	
Total Postage & Fees	\$
Sent To <u>Plains Commerce Bank</u>	
Street, Apt. No., or PO Box No. <u>3817 S Elmwood Ave</u>	
City, State, ZIP+4 [®] <u>Sioux Falls, SD 57105</u>	
PS Form 3800, August 2006 <i>See Reverse for Instructions</i>	

Rosemary Fallon
670 Marshall Rd
Glenmoore, PA 19343
(610)-942-2119

Experian Information Services
P.O. Box 2002
Allen, TX 75013

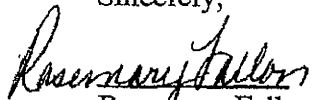
DISPUTE

**RE: Rosemary Fallon SSN: [REDACTED]
Plains Commerce Bank
Account Number 4185 3401 0347 6189
Alleged High Balance \$757**

To Whom it May Concern:

Your company has placed derogatory information on my credit report for the above referenced account. The balance claimed against me is comprised largely of interest, finance charges, penalties or other fees not justified by any existing contract.

Sincerely,


Rosemary Fallon

3/26/11
Date

Rosemary Fallon
670 Marshall Rd
Glenmoore, PA 19343
(610)-942-2119

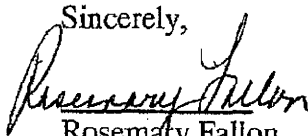
Equifax Information Services
P.O. Box 740241
Atlanta, GA 30374

DISPUTE

RE: Rosemary Fallon SSN: [REDACTED]
Plains Commerce Bank
Account Number 4185 3401 0347 6189
Alleged High Balance \$757

To Whom it May Concern:

Your company has placed derogatory information on my credit report for the above referenced account. The balance claimed against me is comprised largely of interest, finance charges, penalties or other fees not justified by any existing contract.

Sincerely,

Rosemary Fallon


Date

P. O. Box 105518
Atlanta, GA 30348

001108



000965936-1108
Rosemary Z Fallon
670 Marshall Rd
Glenmoore, PA 19343-1704

EQUIFAX

CREDIT FILE : April 29, 2011
Confirmation # 1103018393

Dear Rosemary Z Fallon:

Your request for Equifax to reinvestigate certain items of your credit file is now complete.

Below are your results and a report of your credit file revised, as applicable, as a result of the reinvestigation. If you have additional questions regarding the reinvestigated items, please contact the source of that information directly. You may also contact Equifax regarding the specific information contained within this letter of report within the next 60 days by visiting us at www.investigate.equifax.com

Thank you for giving Equifax the opportunity to serve you.

The Results of Our Reinvestigation

Credit Account Information

For your security and the security of our system, your credit file has been updated with the following information:

Account History Status Code	Descriptions	1 : 30-59 Days Past Due	2 : 60-89 Days Past Due	3 : 90-119 Days Past Due	4 : 120-149 Days Past Due	5 : 150-179 Days Past Due	6 : 180 or More Days Past Due	J : Voluntary Surrender	K : Repossession	L : Charge Off

>>> We have researched the credit account. Account # - 418534010397* The results are: Equifax verified that this item belongs to you. Additional information has been provided from the original source regarding this item. If you have additional questions about this item please contact: Plains Commerce Bank, Attn: Group Attr-nike Day, 3817 S Elmwood Ave, Sioux Falls SD 57105-5555 Phone: (605) 275-7000

Plains Commerce Bank, Attn: Group Attr-nike Day, 3817 S Elmwood Ave, Sioux Falls SD 57105-5555 Phone: (605) 275-7000

Account Number	Date Opened	High Credit	Credit Limit	Terms Duration	Terms Frequency	Months Paid	Activity Description	Transfer/Sold	Deferred Pay	Balance Pay	Balance Pay Date	Due Date
418534010397*	04/2007	\$757	\$640		Monthly	8	Transfer/Sold					
Item As of Date Rec'd	Amount	Amount	Amount	Amount	Amount	Amount	Amount	Amount	Amount	Amount	Amount	Amount
04/2011	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0

Status - Charge Off; Type of Account - Revolving; Type of Loan - Credit Card; Whose Account - Individual Account; ADDITIONAL INFORMATION - Account Transferred or Sold; Charged Off Account Credit Card;

Account History with Status Codes	01/2008	12/2007	11/2007	10/2007	09/2007	08/2007	07/2007
	L	L	5	4	8	2	1

(Continued On Next Page)

Page 1 of 2

1103018393APP-000965936-1108 - 5298

EXHIBIT "B"

SESSIONS, FISHMAN, NATHAN & ISRAEL, L.L.C.
200 Route 31 North, Suite 203
Flemington, NJ 08822
(908) 751-5941
fax (908) 751-5944
Attorneys for Defendant
Plains Commerce Bank

ROSEMARY FALLON a/k/a
ROSEMARY COX a/ka ROSEMARY
JOHNSON,

Plaintiff,

v.

PLAINS COMMERCE BANK, JOHN
DOES 1-10 AND X, Y, Z
CORPORATION,

Defendants.

NOTICE OF NOTICE OF REMOVAL

TO: Clerk of the Court
Common Pleas of Chester County, PA
Chester County Courthouse
Department of Prothonotary
201 West Market Street, Suite 1425
West Chester, PA 19380-0989

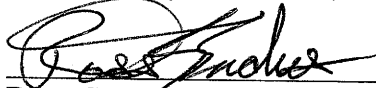
Vicki Piontek, Esq.
Bar ID No. 83559
951 Allentown Road
Lansdale, PA 19446
Attorney for Plaintiff
Phone: 877-737-8617
Fax: 866-408-6735
palaw@justice.com

PLEASE TAKE NOTICE that this action has been removed to the United States District Court for the Eastern District of Pennsylvania. Attached hereto as Exhibit "1" is a copy of the Notice of Removal filed in the United States District Court effecting such removal.

PLEASE TAKE FURTHER NOTICE that in accordance with 28 U.S. § 1446(d), the Court of Common Pleas of Chester County, Pennsylvania shall proceed no further in this action unless and until the action is remanded by the United States District Court for the Eastern District of Pennsylvania.

Dated: August 15, 2011

Respectfully submitted,



Ross S. Enders, Esq. (89840)

SESSIONS, FISHMAN, NATHAN & ISRAEL, L.L.C.

Attorneys for Defendant

Plains Commerce Bank

200 Route 31 North, Suite 203

Flemington, NJ 08822

(908) 751-5941

fax (908) 751-5944

renders@sessions-law.biz

CERTIFICATE OF SERVICE

I hereby certify that on this 15th day of August, 2011, a copy of the foregoing Notice of Filing of Notice of Removal to the United States District Court for the Eastern District of Pennsylvania was served by Federal Express upon the Clerk of the Court and via electronic mail and regular mail upon counsel for plaintiff:

Clerk of the Court
Common Pleas of Chester County, PA
Chester County Courthouse
Department of Prothonothary
201 West Market Street, Suite 1425
West Chester, PA 19380-0989

Vicki Piontek, Esq.
Bar ID No. 83559
951 Allentown Road
Lansdale, PA 19446
Attorney for Plaintiff
Phone: 877-737-8617
Fax: 866-408-6735
palaw@justice.com

By:



Ross S. Enders, Esq.
Attorney for Defendant
Plains Commerce Bank